

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

UNITED STATES OF AMERICA,
Plaintiff

v.

(7) MILTON KERR,
Defendant

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No. 1:21-CR-00152-RP

ORDER

Before the Court is Defendant's Attorney's Motion to Withdraw as Counsel. Dkt. 504.¹ The district court referred this motion to the undersigned for disposition pursuant to 18 U.S.C. § 3006A(b), 28 U.S.C. § 636(b)(1)(A), and Rule 44 of the Federal Rules of Criminal Procedure. Dkt. 506. The motion indicates that the district court sentenced Defendant on October 7, 2022. Dkt. 504, at 1; *see* Dkt. 479 (minute entry reflecting Defendant's sentencing hearing). The district court entered a final judgment in Defendant's case on October 11, 2022. Dkt. 481. Fourteen days later, on October 25, 2022, Defendant filed a pro-se notice of appeal. Dkt. 498. His attorney filed the motion to withdraw at issue here approximately two weeks after Defendant filed his notice of appeal.

The undersigned finds that this Court lacks jurisdiction to act on counsel's request. Defendant's appeal is currently pending before the Fifth Circuit Court of Appeals. *See United States v. Kerr*, No. 22-50949 (5th Cir. filed Oct. 25, 2022).

¹ The motion was filed under seal. The Court's order here is not, but the order will not divulge any privileged communications contained within the motion. The Court, therefore, sees no reason to seal this order.

Defendant's attorney's motion seeks permission to withdraw from an appointment made by that court. Dkt. 504, at 1. "An appeal divests the district court of its jurisdiction 'over those aspects of the case involved in the appeal.'" *Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U. S. 56, 58 (1982)). Thus, in a criminal case, an effective notice of appeal divests the district court of jurisdiction. *United States v. Bolton*, 908 F.3d 75, 101 (5th Cir. 2018), *cert. denied*, 140 S. Ct. 47 (2019); *United States v. Lucero*, 755 F. App'x 384, 387 (5th Cir. 2018).

For these reasons, the Court **DENIES** Defendant's Attorney's Motion to Withdraw as Counsel, Dkt. 504.

SIGNED November 15, 2022.



DUSTIN M. HOWELL
UNITED STATES MAGISTRATGE JUDGE